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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2443rd meeting
Held at the Palais Wilson, Geneva, on Wednesday, 11 May 2016, at 10 a.m.

Chair: Ms. Crickley

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The meeting was called to order at 10.35 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Draft concluding observations on the combined twenty-first to twenty-third periodic reports of Spain (CERD/C/ESP/CO/R.21-23)

1. **Mr. Murillo Martínez** (Country Rapporteur), introducing the draft concluding observations on the combined twenty-first to twenty-third periodic reports of Spain (CERD/C/ESP/CO/R.21-23), said that the comments submitted by Committee members had been reflected in the draft text under consideration.

2. **The Chair** invited the members of the Committee to consider the draft concluding observations paragraph by paragraph.

Paragraph 1

3. **The Chair** said that a reference to the 2443rd meeting should be inserted into paragraph 1.

4. *Paragraph 1, as amended, was adopted.*

Paragraph 2

5. *Paragraph 2 was adopted.*

Paragraph 3

6. **Ms. McDougall** said that she was uncomfortable with the use of the term "Gypsy" in the English-language version of the document under consideration. Except where the word formed part of the official title of a programme or action plan, the term "Roma" should be employed instead.

7. **The Chair** said that the Spanish Roma self-identified as "*gitanos*" (Gypsies). The delegation of Spain had stated that, when translating documents into English, they generally used the term "Roma".

8. **Mr. Avtonomov** said that the term "*gitanos*" was used by Spanish Roma in order to make a distinction between themselves and Eastern European Roma, who were known as "*romanies*" in Spanish.

9. **The Chair** asked the secretariat to check the titles of the Plan of Action and the National Strategy referred to in subparagraph 3 (c).

10. **Mr. Lindgren Alves** suggested that the English word "Gypsy" be replaced with the Spanish term "*gitano*", except in reference to official programmes and plans.

11. *It was so agreed.*

12. *Paragraph 3 was adopted, subject to possible minor editorial amendments.*

Paragraph 4

13. *Paragraph 4 was adopted.*

Paragraph 5

14. *Paragraph 5 was adopted.*

Paragraph 6

15. **Mr. Kemal** suggested adding "and in the light of United Nations General Assembly resolution 70/1, 'Transforming our world: the 2030 Agenda for Sustainable Development'," after the reference to the Committee's general recommendation No. 8 (1990).

16. Following an exchange of views in which **the Chair**, **Ms. McDougall** and **Ms. Dah** took part, **the Chair** suggested that the Committee should not include any reference to the Sustainable Development Goals in the paragraph until it had received clarification of the situation regarding the adoption of indicators for the Goals relating to disaggregated data.

17. *It was so decided.*

18. *Paragraph 6 was adopted.*

Paragraph 7

19. *Paragraph 7 was adopted.*

Paragraph 8

20. **The Chair** said that the full name of the Committee on the Elimination of Racial Discrimination should be written out in subparagraph 8 (b) in order to avoid confusion.

21. **Mr. Khalaf** said that the word "mechanisms" in paragraph 8 (b) should perhaps be replaced with the term "bodies".

22. **Mr. Murillo Martínez** (Country Rapporteur) said that the concept of "mechanisms" included, for example, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

23. **The Chair** said that she thought the term "mechanism" was satisfactory. She suggested that the word "including" should be inserted before "through the provision of sufficient resources" at the end of subparagraph 8 (b), since effective implementation of the plan would require more than the provision of resources; political will, for example, would also be needed.

24. **Mr. Murillo Martínez** (Country Rapporteur) said that the Spanish-language version of the text was clear in that regard.

25. **The Chair** said that, in that case, "including" was not needed. She took it that the Committee wished to adopt the paragraph with the amendment to subparagraph 8 (b).

26. *Paragraph 8, as amended, was adopted.*

Paragraph 9

27. **Ms. Dah** said that the heading above paragraphs 9 and 10 in the French-language version referred to racist speech and incidents, whereas the Spanish-language version referred only to racist incidents. If the intention had been to refer to the issue of hate speech, then reference should be made to article 4 of the Convention in paragraph 9.

28. **The Chair** said that the secretariat had informed her that the French-language version of the heading was inaccurate and would be brought into line with the Spanish-language version. There had not been any intention to refer to the issue of hate speech in that section of the document.

29. *Paragraph 9 was adopted.*

Paragraph 10

30. *Paragraph 10 was adopted.*

Paragraph 11

31. **Ms. Mohamed** said that clarification of the term "decree-law" would be welcome.

32. **Mr. Murillo Martínez** (Country Rapporteur) explained that, in Spain and in certain Latin American States, the executive branch of government could issue decrees that had the force of law. Such a decree was known as a "*decreto ley*" (decree-law).

33. *Paragraph 11 was adopted.*

Paragraph 12

34. *Paragraph 12 was adopted.*

Paragraph 13

35. **Mr. Cali Tzay**, in response to a request from **Ms. Mohamed** for clarification of the term "royal decree", said that in countries such as Spain with a monarch who possessed legal powers, a decree could be drafted by the Council of Ministers and signed by the reigning monarch. Such a decree was known as a royal decree and, like a decree-law, had the force of law.

36. **Ms. Li** Yanduan said that the term "due process judge" might be unclear to a layperson.

37. **Mr. Murillo Martínez** said that the Spanish term, "*juez de control*", was sufficiently clear. Perhaps a different term could be found in English.

38. *Paragraph 13 was adopted, subject to minor editorial changes in the English version.*

Paragraph 14

39. **Mr. Kut** said that the phrase "as appropriate" should be added after "perpetrators are punished" at the end of the paragraph, in keeping with the Committee's usual practice.

40. *Paragraph 14, as amended, was adopted.*

Paragraphs 15 to 19

41. *Paragraphs 15 to 19 were adopted.*

Paragraph 20

42. **The Chair** suggested that the reference to treaty bodies in the first sentence of the paragraph should be strengthened by citing the specific treaty bodies that had called for investigations into the excessive use of force by security forces in Ceuta and Melilla.

43. **Ms. Shepherd** said that the preposition "by" should be added before the phrase "groups in Spanish society" in the first sentence to make it clear that the treaty bodies were not a part of Spanish society.

44. *Paragraph 20, as amended, was adopted.*

Paragraph 21

45. *Paragraph 21 was adopted.*

Paragraph 22

46. **Ms. Shepherd**, noting that paragraph 21 referred specifically to single women and single mothers, asked whether paragraph 22 should do the same.

47. **Mr. Murillo Martinez** (Country Rapporteur) said that he saw no problem with adding "especially those of single women and single mothers" after "the specific needs of the persons located in the centres".

48. *Paragraph 22, as amended, was adopted.*

Paragraph 23

49. **The Chair**, in response to a question from **Mr. Kut**, confirmed that, in both paragraph 23 and paragraph 24, the term "Gypsies" would be changed to "*gitanos*" in references to Spanish Roma as opposed to Roma from elsewhere.

50. *Paragraph 23, as amended, was adopted.*

Paragraph 24

51. **Ms. McDougall** said that the phrase "step up" in the first sentence should be replaced with "accelerate". The second sentence should also include a reference to the Committee's general recommendation No. 32 on special measures.

52. *Paragraph 24, as amended, was adopted.*

Paragraph 25

53. **Mr. Murillo Martinez** said that the word "alleged" should be added before "offenders" in the second sentence of the paragraph.

54. *Paragraph 25, as amended, was adopted.*

Paragraph 26

55. **Mr. Murillo Martinez** said that, in order to make the recommendation more flexible for the State party, he would suggest adding "*o adecuación*" (or adaption) before "of an independent and impartial body" in the first sentence of the paragraph.

56. **Mr. Kut** said that it seemed inappropriate to end the paragraph with the phrase "to promote general awareness of diversity at all levels of education" because the paragraph focused on the media and not on education. The phrase should be omitted as it diluted the strength of the recommendation.

57. **Ms. Shepherd** pointed out that the media played a role in educating the public; it might therefore be clearer to refer to "public education".

58. **Mr. Murillo Martinez** suggested that, rather than removing the reference to education from the recommendation in paragraph 26, the idea of education might be introduced in paragraph 25.

59. **The Chair** suggested that the last part of the sentence in question might be amended to read "to promote general awareness of diversity in all dimensions of the media".

60. **Ms. Dah**, noting that awareness-raising was an important aspect of article 7 of the Convention, said that she supported the Chair's proposal.

61. *Paragraph 26, as amended, was adopted.*

Paragraph 27

62. *Paragraph 27 was adopted.*

Paragraph 28

63. **Ms. McDougall** proposed replacing "once and for all" with "completely". She also wondered whether "acts" should be replaced with "violations of the law".

64. **The Chair** suggested rephrasing the sentence to read: "… take the necessary steps to put a definitive end to …", which would align the English version more closely with the Spanish version.

65. **Mr. Murillo Martínez** said that he preferred to retain the word "acts", which was more general. The acts in question might be of an administrative, procedural or regulatory nature and not necessarily a violation of the law per se.

66. **The Chair** said that she took it that the Committee wished to retain the word "acts" and to amend the English version to read "… put a definitive end to …"

67. *Paragraph 28, as amended, was adopted.*

Paragraphs 29 and 30

68. **Ms. Shepherd** said that some of the matters addressed in the recommendations in paragraph 30 were not mentioned as concerns in paragraph 29. For example, there was nothing in paragraph 29 about disaggregated data, employment or the absence of dialogue on the impact of slavery and the slave trade.

69. **Mr. Murillo Martínez** said that the concept of structural discrimination, to which the Committee had referred in its general recommendation No. 34 on racial discrimination against people of African descent, encompassed the issues mentioned by Ms. Shepherd; nevertheless, an expression of concern about the absence of dialogue on issues affecting Afro-descendants, including the slavery and slave trade of the past, could be added at the end of the paragraph.

70. **Mr. Kut** said that he found paragraph 29 confusing, particularly the second sentence. He also wondered whether it was desirable to conflate the situation of victims of the slave trade with that of African migrants to Spain, two different groups with different concerns.

71. **Ms. Hohoueto** agreed that there was a distinction to be made between persons who were descendants of victims of the slave trade and more recent African migrants.

72. **Ms. Shepherd** said that there was nevertheless a sense of unity between continental Africans and people of African descent over the issue of slavery and the slave trade. She suggested that paragraph 29 might be clarified by adding "in Spanish society" at the end of the first sentence and by redrafting the second sentence to read: "But it is concerned at the existence of structural discrimination in various areas of life of people of African descent, rooted in the transatlantic slave trade and slavery. This is reflected in the lack of political representation and public participation in all branches of public life and in employment practices." In the last sentence, she suggested inserting "instead of as Spanish citizens" after "second-generation migrants". She also proposed adding a new sentence at the end of the paragraph, reading: "The Committee is also concerned at the lack of dialogue over reparatory justice between the State and people of African descent in Spain, who claim to be affected by the modern legacies of slavery and the transatlantic slave trade."

73. **The Chair** said that, as currently drafted, paragraph 29 stated as a fact that all people of African descent born in Spain were referred to as "second-generation migrants". It should be verified that that was indeed the case.

74. **Ms. Dah** suggested that further discussion of paragraphs 29 and 30 should be postponed to give Mr. Murillo Martínez, Ms. Shepherd and other interested members time to prepare a new draft of paragraph 29, as well as of paragraph 30 if necessary, to be considered at the Committee's next meeting.

75. *It was so agreed.*

Paragraph 31

76. **Ms. Hohoueto** suggested deleting the word "significant" in the first sentence.

77. **Ms. McDougall**, supported by **Mr. Murillo Martínez**, said that the differences in the quality of education were indeed significant and that the Committee should reflect that fact in its concluding observations.

78. **The Chair** said that she took it that the Committee wished to adopt the paragraph as worded in the current draft.

79. *It was so decided.*

80. *Paragraph 31 was adopted.*

Paragraph 32

81. *Paragraph 32 was adopted.*

Paragraph 33

82. **Mr. Murillo Martínez** suggested that "and peoples of African descent" be added after each mention of indigenous peoples in both paragraphs 33 and 34.

83. **Ms. Hohoueto** proposed replacing the phrase "outside Spain" with the phrase "in former Spanish colonies" in the last sentence.

84. **The Chair** pointed out that indigenous persons adversely affected by the actions of transnational corporations headquartered in Spain might be in countries that were not former Spanish colonies.

85. **Ms. McDougall** suggested replacing the phrase "outside Spain" with the phrase "in the country of operations" at the end of the last sentence.

86. **Ms. Dah** said that the phrase "by the State party" should be added at the end of the first sentence.

87. **The Chair**, agreeing that the proposal by Ms. McDougall would clarify what was meant, said that she took it that the Committee wished to accept that amendment and those proposed by Ms. Dah and Mr. Murillo Martínez.

88. *Paragraph 33, as amended, was adopted.*

Paragraph 34

89. **The Chair** said that the wording of paragraph 34 would be amended to reflect the amended wording of paragraph 33.

90. **Ms. McDougall** asked whether she was correct in thinking that International Labour Organization Convention No. 169 referred to "prior consent" rather than "prior consultation".

91. **Mr. Calí Tzay** said that, in fact, that Convention referred only to prior consultation, although the United Nations Declaration on the Rights of Indigenous Peoples did refer to "prior and informed consent". While he did not consider prior consultation to be sufficient,

it would constitute a major step forward for Spain. If he remembered correctly, the Committee had previously decided that a recommendation like the one contained in paragraph 34 should be made as a standard recommendation for any State party where the issue was relevant. Such a recommendation had already been made, for example, in concluding observations relative to Australia, Canada, the Netherlands and the United States of America.

92. **Mr. Murillo Martínez** said that the current wording was appropriate, as it fell within the framework of what was currently legally binding for most States where the issue was relevant.

93. **The Chair** suggested that the Committee might also recommend the speedy final adoption of the National Plan on Business and Human Rights, which was currently only a draft plan.

94. *It was so decided.*

95. *Paragraph 34, as amended, was adopted.*

96. **The Chair** invited the members of the Committee to consider paragraph by paragraph the portion of the draft concluding observations that had not been submitted for in-session translation owing to the word limit.

Paragraph 35

97. **The Chair** said that a heading that read "Ratification of other instruments" would be inserted before the paragraph, as per the Committee's usual practice.

98. *Paragraph 35 was adopted.*

Paragraph 36

99. **Mr. Lindgren Alves** asked whether it might be possible to combine paragraphs 36 and 37 into a single paragraph.

100. **The Chair** said that it would not be expedient to do so as both were standard paragraphs.

101. *Paragraph 36 was adopted.*

Paragraph 37

102. *Paragraph 37 was adopted.*

Paragraph 38

103. **The Chair** said that the standard phrase concerning the dissemination of the Committee's concluding observations in the languages spoken in the State party would be added to the paragraph.

104. *Paragraph 38 was adopted on that understanding.*

Paragraph 39

105. *Paragraph 39 was adopted.*

106. **Mr. Avtonomov** proposed adding a paragraph that would include the standard recommendation to ratify the amendment to article 8 of the Convention, given that Spain had not yet done so.

107. **Ms. Dah** asked whether Spain had made the optional declaration provided for in article 14 of the Convention. If not, the standard recommendation to do so might also be included.

108. **Mr. Avtonomov** said that Spain had made the optional declaration.

109. **The Chair** said that she took it that the Committee wished to adopt the standard recommendation concerning the amendment to article 8 of the Convention, which would become paragraph 40.

110. *It was so decided.*

Paragraph 40 (new paragraph 41)

111. **Mr. Avtonomov** suggested requesting information on the State party's follow-up to the recommendations contained in paragraphs 12, 26 and 28.

112. **Mr. Bossuyt** said that he was in favour of requesting information on follow-up to the recommendations in paragraphs 12 and 28, but thought that the Committee should not request information on paragraph 26 in the interest of limiting the request to what could reasonably be achieved within a year's time.

113. *Paragraph 40 (new paragraph 41), as amended, was adopted.*

Paragraph 41 (new paragraph 42)

114. **Mr. Avtonomov** proposed drawing attention to the particular importance of the recommendations in paragraphs 8, 14, 24 and 30.

115. **Mr. Kut** said that it would not be appropriate to adopt the paragraph if it included a reference to paragraph 30, as the final wording of that paragraph had not yet been decided.

116. **Mr. Murillo Martínez** proposed referring to paragraphs 14, 20, 24 and, provisionally, 30.

117. **The Chair** suggested deferring the adoption of the paragraph until the next meeting.

118. *It was so agreed.*

Paragraph 42 (new paragraph 43)

119. **Mr. Avtonomov** proposed recommending that the State party should submit its combined twenty-fourth and twenty-fifth periodic reports on 14 October 2019.

120. *Paragraph 42 (new paragraph 43), as amended, was adopted.*

The meeting rose at 12.55 p.m.